

1 THE HONORABLE S. KATE VAUGHAN  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 INLAND NORTHWEST RENAL CARE )  
11 GROUP, LLC d/b/a NORTHPOINTE )  
12 DIALYSIS, )  
13 v. ) Plaintiff, ) Case No. C19-1758-JCC-SKV  
14 WEBTPA EMPLOYER SERVICES, LLC )  
15 and FIRST CHOICE HEALTH NETWORK, )  
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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things  
3 produced or otherwise exchanged: (1) Protected Health Information under HIPAA, (as defined  
4 by 45 C.F.R. § 160.103 and 164.501); (2) accounting information or tax records; (3) non-  
5 publicly available financial information including, but not limited to, income statements and  
6 balance sheets; (4) confidential business information including, but not limited to, company  
7 trade secrets or competitive and strategic initiatives, where such information is not readily  
8 ascertainable from public sources and the confidentiality of which the party has taken  
9 reasonable steps to maintain; and/or (5) information otherwise subject to protection under  
10 Washington law, federal law, or by contract.

11 3. SCOPE

12 The protections conferred by this agreement cover not only confidential material (as  
13 defined above), but also (1) any information copied or extracted from confidential material; (2)  
14 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
15 conversations, or presentations by parties or their counsel that might reveal confidential  
16 material.

17 However, the protections conferred by this agreement do not cover information that is  
18 in the public domain or becomes part of the public domain through trial or otherwise, with the  
19 exception of Protected Health Information under HIPAA which shall at all times remain subject  
20 to the protections conferred by this agreement and which the parties shall at all times maintain  
21 the confidentiality of in accordance with Section 4 of this agreement.

22 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

23 4.1 Basic Principles. A receiving party may use confidential material that is  
24 disclosed or produced by another party or by a non-party in connection with this case only for  
25 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
26 disclosed only to the categories of persons and under the conditions described in this agreement.

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1 Confidential material must be stored and maintained by a receiving party at a location and in a  
2 secure manner that ensures that access is limited to the persons authorized under this agreement.

3       4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the designating party, a receiving party may  
5 disclose any confidential material only to:

6               (a)     the receiving party’s counsel of record in this action, as well as  
7 employees of counsel to whom it is reasonably necessary to disclose the information for this  
8 litigation;

9               (b)     the officers, directors, and employees (including in house counsel) of the  
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
12 designated;

13               (c)     experts and consultants to whom disclosure is reasonably necessary for  
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
15 (Exhibit A);

16               (d)     the court, court personnel, and court reporters and their staff;

17               (e)     copy or imaging services retained by counsel to assist in the duplication  
18 of confidential material, provided that counsel for the party retaining the copy or imaging  
19 service instructs the service not to disclose any confidential material to third parties and to  
20 immediately return all originals and copies of any confidential material;

21               (f)     during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material  
25 must be separately bound by the court reporter and may not be disclosed to anyone except as  
26 permitted under this agreement;

27  
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(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) any other person or entity to which the parties agree in writing, including but not limited to a mediator.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files. Notwithstanding anything in this paragraph to the contrary, any party may redact Protected Health Information under HIPAA prior to filing any document, and no party is required to file a motion to seal in order to redact Protected Health Information under HIPAA from a filing.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the

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1 material, documents, items, or communications for which protection is not warranted are not  
 2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 5 unnecessarily encumber or delay the case development process or to impose unnecessary  
 6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated  
 8 for protection do not qualify for protection, the designating party must promptly notify all other  
 9 parties that it is withdrawing the mistaken designation.

10 **5.2 Manner and Timing of Designations**. Except as otherwise provided in this  
 11 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 12 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 13 be clearly so designated before or when the material is disclosed or produced.

14 (a) **Information in documentary form**: (e.g., paper or electronic documents  
 15 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 16 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
 17 contains confidential material. If only a portion or portions of the material on a page qualifies  
 18 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
 19 making appropriate markings in the margins).

20 (b) **Testimony given in deposition or in other pretrial proceedings**: the  
 21 parties and any participating non-parties must identify on the record, during the deposition or  
 22 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate  
 23 other testimony after reviewing the transcript. Any party or non-party may, within thirty days  
 24 after receiving the transcript of the deposition or other pretrial proceeding, designate portions  
 25 of the transcript, or exhibits thereto, as confidential. During that thirty-day period, if a party  
 26 seeks to publicly file or disclose a transcript, exhibit, or portion thereof, other than in a manner  
 27 consistent with this agreement, it must provide fifteen business days' notice and an opportunity

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1 to designate any confidential materials to all other parties before doing so. If a party so  
 2 designates all or any portion as confidential, the parties shall proceed as set forth under  
 3 paragraph 4.3. If a party or non-party desires to protect confidential information at trial, the  
 4 issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a prominent place  
 6 on the exterior of the container or containers in which the information or item is stored the word  
 7 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
 8 the producing party, to the extent practicable, shall identify the protected portion(s).

9 (d) Non-party productions: any party may, within thirty days after receiving  
 10 documents produced in this litigation by a non-party, designate such documents or any portion  
 11 thereof as confidential. During that thirty-day period, if a party seeks to publicly file or disclose  
 12 a transcript, exhibit, or portion thereof, other than in a manner consistent with this agreement,  
 13 it must provide fifteen business days’ notice and an opportunity to designate any confidential  
 14 materials to all other parties before doing so. If a party so designates all or any portion as  
 15 confidential, the parties shall proceed as set forth under paragraph 4.3.

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 17 designate qualified information or items does not, standing alone, waive the designating party’s  
 18 right to secure protection under this agreement for such material. Upon timely correction of a  
 19 designation, the receiving party must make reasonable efforts to ensure that the material is  
 20 treated in accordance with the provisions of this agreement. With regard to Protected Health  
 21 Information under HIPAA, any party may designate such information as “CONFIDENTIAL”  
 22 at any time, notwithstanding the provisions of this paragraph, and all parties agree that they will  
 23 endeavor to designate such information as early as is reasonably possible.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 26 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 2 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 3 original designation is disclosed.

4       6.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
 5 regarding confidential designations without court involvement. Any motion regarding  
 6 confidential designations or for a protective order must include a certification, in the motion or  
 7 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
 8 conference with other affected parties in an effort to resolve the dispute without court action.  
 9 The certification must list the date, manner, and participants to the conference. A good faith  
 10 effort to confer requires a face-to-face meeting or a telephone conference.

11       6.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
 12 intervention, the designating party may file and serve a motion to retain confidentiality under  
 13 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 15 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
 16 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 17 maintain the material in question as confidential until the court rules on the challenge.

18       7.      PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 19 LITIGATION

20       If a party is served with a subpoena or a court order issued in other litigation that  
 21 compels disclosure of any information or items designated in this action as  
 22 “CONFIDENTIAL,” that party must:

23           (a)    promptly notify the designating party in writing and include a copy of  
 24 the subpoena or court order;

25           (b)    promptly notify in writing the party who caused the subpoena or order to  
 26 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 27 subject to this agreement. Such notification shall include a copy of this agreement; and

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(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

## 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

## 10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

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1       The confidentiality obligations imposed by this agreement shall remain in effect until a  
2 designating party agrees otherwise in writing or a court orders otherwise.

3       IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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5       DATED: June 7, 2021

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*s/Carin A. Marney*  
Carin Marney, WSBA No. 25132  
LANE POWELL PC  
Attorney for Plaintiff Inland Northwest  
Renal Care Group, LLC d/b/a  
Northpointe Dialysis

1       DATED:: June 7, 2021

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*s/Robert Zaffrann*  
Robert Zaffrann, *Pro Hac Vice*  
Adam Santeusonio, *Pro Hac Vice*  
DUANE MORRIS LLP  
Attorney for Plaintiff Inland Northwest  
Renal Care Group, LLC d/b/a  
Northpointe Dialysis

1       DATED: June 7, 2021

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*s/Wendy Lyon*  
Wendy Lyon, WSBA No. 34461  
FOX ROTHSCHILD LLP  
Attorney for Defendant First Choice  
Health Network, Inc.

1       DATED:: June 7, 2021

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*s/Benjamin Greenberg*  
Benjamin Greenberg, WSBA No. 44120  
Andrew Holly, *Pro Hac Vice*  
DORSEY & WHITNEY LLP  
Attorney for Defendant WebTPA  
Employer Services, LLC

1       PURSUANT TO STIPULATION, IT IS SO ORDERED.

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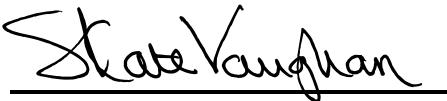
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1 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
2 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
3 federal or state proceeding, constitute a waiver by the producing party of any privilege  
4 applicable to those documents, including the attorney-client privilege, attorney work-product  
5 protection, or any other privilege or protection recognized by law.

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7 Dated this 10th day of June, 2021.

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10 S. KATE VAUGHAN  
11 United States Magistrate Judge  
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